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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,511	01/06/2006	Qingmao Hu	L2005.0011/P011	1405
24998	7590	12/10/2007	EXAMINER	
DICKSTEIN SHAPIRO LLP			VANCHY JR, MICHAEL J	
1825 EYE STREET NW			ART UNIT	
Washington, DC 20006-5403			PAPER NUMBER	
			2624	
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			12/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,511

Applicant(s)

HU ET AL.

Examiner

Michael Vanchy Jr.

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 6-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 01/06/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 1, 2, 4, 5, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hardy et al., US 6,240,308 B1, and further in view of *Automatic segmentation of 3D-MRI data using a genetic algorithm*, R. Moller, R. Zeipelt, Medical Imaging and Augmented Reality, 2001, Proceedings, International Workshop on, 10-12 June 2001 Page(s): 278-281.**

Regarding claims 1, 2, and 3:

Hardy et al. (Hardy) teaches a method for extracting third ventricle information from images of a plurality of axial slices (Figures 1, 5, and 18) of a third ventricle brain having

an anterior commissure and a posterior commissure (col. 7, lines 23-41). Hardy also teaches the third ventricle have a plane and width (col. 3, lines 14-28), determining a third ventricle midline for each of a number of the axial slices (Fig. 18 and col. 6, lines 24-43), the orientation of each of the midlines (Fig. 18 and col. 6, lines 24-43).

However, Hardy is silent on generating a histogram of each of the midlines. However, Moller does teach using histograms for medical imaging including calculating a least squares error (sections 2. Histogram computation, and 3. Threshold computation).

Histograms are beneficial for distinguishing between regions within the brain, including, but not limited to, gray matter, white matter, and cerebral spinal fluid. Distinguishing these regions allows the person to determine certain aspects of the brain including the third ventricle and its width. Hardy doesn't create histograms, but however does plot and store data taken from the person's brain. Thus, it would be clear to one of ordinary skill in the art at the time of the invention to modify Hardy to use the data taken to create histograms to more accurately distinguish regions of the brain.

Regarding claim 4 Hardy teaches:

A method according to claim 1, further comprising calculating the width of the third ventricle (col. 3, lines 14-28).

Regarding claim 5 Hardy teaches:

A method according to claim 4, wherein the step of calculating the width of the third ventricle comprises determining the axial slice having the anterior commissure and the posterior commissure, determining two lines parallel to the third ventricle plane in said determined slice, said two lines being tangential to the image of the third ventricle in said slice to indicate the boundary between the third ventricle and grey matter, and

calculating the distance between the two parallel lines, said distance being representative of the width of the third ventricle (Fig. 8, col. 11, lines 55-62, col. 12, lines 10-15).

Regarding claim 16, see rejection made to claim 1 as it addresses the rejection to the method of this apparatus.

Regarding claim 17, see rejection made to claim 1 as it addresses the rejection to the method of this computer program.

Allowable Subject Matter

4. Claims 6-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Examiner's Note

The referenced citations made in the rejection(s) above are intended to exemplify areas in the prior art document(s) in which the examiner believed are the most relevant to the claimed subject matter. However, it is incumbent upon the applicant to analyze the prior art document(s) in its/their entirety since other areas of the document(s) may be relied upon at a later time to substantiate examiner's rationale of record. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). However, "the prior art's mere disclosure of more than one alternative does not

constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed...." In re Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Vanchy Jr. whose telephone number is (571) 270-1193. The examiner can normally be reached on Monday - Friday 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samir Ahmed can be reached on (571) 272-7413. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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